

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: John Rayson, 954 566 8855

PREPARED BY: Lauren Rice

SUBJECT: Resolution

AFFECTED DISTRICT:

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: SETTLEMENT AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA ACCEPTING THE STIPULATED SETTLEMENT AGREEMENT BETWEEN UNIPROP MANUFACTURED HOUSING COMMUNITIES INCOME FUND II d/b/a SUNSHINE VILLAGE AND THE TOWN OF DAVIE.

REPORT IN BRIEF: Uniprop owns Sunshine Village Mobile Home Park which is located in the Town of Davie. The Town of Davie adopted a solid waste assessment rate per residential unit through Ordinance No. 2005-19. In 2007 and 2008 Uniprop was assessed a Solid Waste Service Special Assessment on all 358 residential spaces. However, in 2007 less than 190 units were provided solid waste collection and disposal service by the Town of Davie and in 2008 less than 224 units were provided service. In March 2009 Uniprop questioned in writing and by personal appearance the solid waste assessment imposed on vacant sites in Sunshine Village. The total assessment charged since March 2009 on the vacant sites is \$30,713.28. The Town of Davie has corrected the charging on solid waste assessments for vacant spaces for 2010. The Town of Davie and Uniprop have agreed on a Stipulated Settlement Agreement. The Town of Davie will pay Uniprop \$30,713.28 within 20 days of the execution of the agreement. Uniprop will waive all claims concerning the assessment from 2007-December 2009. Both parties agree that the settlement is confidential and the terms shall not be disclosed with any person not a party to the agreement.

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Additional Comments:

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): Resolution, Stipulated Settlement Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA ACCEPTING THE STIPULATED SETTLEMENT AGREEMENT BETWEEN UNIPROP MANUFACTURED HOUSING COMMUNITIES INCOME FUND II d/b/a SUNSHINE VILLAGE AND THE TOWN OF DAVIE.

WHEREAS, Uniprop Manufactured Housing Communities Income Fund II d/b/a/ Sunshine Village (hereinafter Uniprop) is the owner of real property, a mobile home park known as Sunshine Village located at 13453 S.W. 5th Street, Davie, Florida 33325; and

WHEREAS, the Town of Davie and Uniprop have entered into Stipulated Settlement Agreement to resolve a dispute between them concerning the solid waste special assessment levied by the Town of Davie from 2007-2009; and

WHEREAS, the Town of Davie has corrected the charging of solid waste assessments for vacant spaces in the solid waste assessment ordinance adopted for 2010 and agrees to reimburse Uniprop for the total assessments charged for vacant sites since March 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF THE TOWN DAVIE, FLORIDA, AS FOLLOWS:

SECTION 1: The Town of Davie and Uniprop accept the Stipulated Settlement Agreement and the Town of Davie further agrees to pay Uniprop the sum of \$30,713.28 within 20 days of the execution of the agreement.

SECTION 2: The Town of Davie and Uniprop both agree that the settlement is confidential and the terms of the agreement shall not be disclosed or discussed with any other person not a party to the agreement.

SECTION 3: The Town of Davie and Uniprop agree to be bound by the terms of the attached settlement agreement.

SECTION 4: This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2010

MEMBER
ATTEST:

MAYOR / COUNCIL

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2010

STIPULATED SETTLEMENT AGREEMENT

The Parties to this Stipulated Settlement Agreement are UNIPROP MANUFACTURED HOUSING COMMUNITIES INCOME FUND II d/b/a SUNSHINE VILLAGE (hereinafter Uniprop), whose address is 280 Daines Street, Suite 300, Birmingham, Michigan 48009, a foreign limited partnership authorized to do business in the state of Florida. Uniprop is the owner of real property, a mobile home park known as Sunshine Village located at 13453 S.W. 5th Street, Davie, Florida 33325, and the TOWN OF DAVIE, 6591 Orange Drive, Davie, FL 33325. The Parties enter into this Stipulated Settlement Agreement to resolve a dispute between them concerning the solid waste special assessment levied by the Town of Davie from 2007 - 2009.

1. Uniprop owns Sunshine Village Mobile Home Park located in the Town of Davie.
2. The Town of Davie adopted a solid waste special assessment through Ordinance No.2005-19, the Solid Waste Service Assessment Ordinance, and for each year thereafter the Town of Davie adopted an Annual Rate Resolution, establishing a solid waste assessment rate per residential unit.
3. The Solid Waste Service Assessment Ordinance establishes a solid waste assessment that must be paid by the property owner as part of the property tax bill by the Town of Davie. A solid waste special assessment is authorized under Florida law if: (1) the property assessed derives a direct special benefit from the service provided, and (2) the assessment is fairly and reasonably apportioned among properties receiving the special assessment.
4. Uniprop has been assessed for a Solid Waste Service Special

Assessment on 358 residential units by the Town of Davie, notwithstanding that there are not 358 residential units in Sunshine Village.

5. In 2007, Uniprop was billed \$101,324.74 for the solid waste special assessment at a rate of \$283.03 per unit for 358 residential units, which amount was paid by Uniprop. During 2007 there were less than 190 residential units in Sunshine Village that were provided waste collection and disposal service by the Town of Davie. Uniprop asserts that the Town of Davie was aware in 2007 of the number of residential units that it provided service to in Sunshine Village.

6. In 2008, Uniprop was billed \$105,713.82 for the solid waste special assessment at a rate of \$295.29 per unit for 358 residential units. During 2008 there were less than 224 residential units in Sunshine Village that were provided solid waste collection and disposal service. Uniprop asserts that the Town of Davie was aware in 2008 of the number of residential units that it provided service to in Sunshine Village.

7. In 2009, Uniprop was billed \$105,713.82 for the solid waste assessment at a rate of \$24.61 per unit per month. In March, 2009, Uniprop questioned in both writing and by personal appearance the solid waste assessment imposed on vacant spaces in the Sunshine Village Mobile Home Park. The vacancies per month from March 2009 to December 2009 and the special assessment imposed by the Town of Davie are as follows.

March - $121 \times \$24.61 = \$2,977.81$

April - $122 \times \$24.61 = \$3,002.42$

May - $124 \times \$24.61 = \$3,051.64$

June - $124 \times \$24.61 = \$3,051.64$

July - $125 \times \$24.61 = \$3,076.25$

Aug. - $125 \times \$24.61 = \$3,076.25$

Sept – 126 X \$24.61 = \$3,100.86

Oct. – 127 X \$24.61 = \$3,125.47

Nov. – 127 X \$24.61 = \$3,125.47

Dec. – 127 X \$24.61 = \$3,125.47

Total Assessment Charged for Vacant Sites since March is \$30,713.28.

8. Uniprop asserts that it received no benefit from waste collection for mobile home park spaces that were vacant in Sunshine Village during the time the Town of Davie was collecting this assessment.

9. The Town of Davie disputes that Uniprop timely objected to the special assessment for solid waste prior to March, 2009, but acknowledges that it did collect the solid waste assessment for vacant sites in Sunshine Village from March, 2009 through December 2009. The Town of Davie has corrected the charging of solid waste assessments for vacant spaces in the solid waste assessment ordinance adopted for 2010, and Uniprop agrees that it will not contest the methodology used by the Town of Davie for calculation of vacancies as provided in the 2010 ordinance.

10. Any facsimile or copies of this Agreement shall be treated as an original for all purposes.

11. The representatives of the Town of Davie and of Uniprop, by their signatures below, attest they have read this Stipulated Settlement Agreement, have consulted with and considered the advice of counsel, and understand and agree to the terms and conditions of this Stipulated Settlement Agreement.

NOW THEREFORE, BY THIS STIPULATED SETTLEMENT AGREEMENT, the Parties intend to mutually settle all claims, actions, and causes of action, claims or potential claims existing between them, and acknowledge and agree as follows:

A. Payment. The Town of Davie agrees to pay Uniprop the sum of

\$30,713.28. Payment shall be made within 20 days of execution of this Stipulated Settlement Agreement.

B. Waiver of All Claims and Release. Uniprop agrees to waive any and all claims it may have concerning the imposition of the solid waste assessment from 2007 through December, 2009 and hereby releases the Town of Davie from any claim for damages, reimbursement or attorneys fees and costs in any way connected with the solid waste assessment.

C. Confidentiality. The Town of Davie and Uniprop both agree this settlement is confidential and the terms thereof or any of the related circumstances shall not be disclosed or discussed with any other person not a party to this Stipulated Settlement Agreement. This clause may be enforced by all legal means.

D. Release. Uniprop hereby releases and forever discharges the Town of Davie, its Town Council members, Town Manager, Directors, employees, consultants, agents and assigns from any and all claims, actions, causes of action, demands, suits, debts, sums of money, controversies, contracts, and all and any actions or causes of actions in law or equity whatsoever, which they now have or which may hereafter accrue on account of the solid waste assessment that is the subject of this Stipulated Settlement Agreement and all transactions or dealings between the Town of Davie and Uniprop Corp. directly or indirectly relating to this matter prior to the date hereof, or any claims made or that could have been made in any lawsuit concerning this special assessment including all claims, defenses, actions and causes of action against any party arising or resulting from the alleged actions of the Town of Davie.

By their signatures below the Parties do hereby adopt and Stipulate to the Settlement Agreement set forth herein:

by:
Town of Davie

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me, a notary public, this ____ day of _____, 2009, by _____, who is ____ personally known to me or ____ produced _____ as identification.

Notary Public
Print Name: _____

My commission expires:

by: _____
Uniprop

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me, a notary public, this ____ day of _____, 2009, by _____ who is ____ personally known to me or ____ produced _____ as identification.

Notary Public
Print Name: _____

My commission expires: